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09/395,106	09/14/1999	JAMES A. WESTHOFF	POL3.036	5428

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EXAMINER	
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3637

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20

Application Number: 09/395,106

Filing Date: September 14, 1999

Appellant(s): WESTHOFF ET AL.

MAILED

APR 08 2003

Louis Weinstein
For Appellant

GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/23/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

The application contained claims 1-46

Claims 1-20, 27-29, 37-40, 42-44 have been canceled.

Claims 30-36 have been allowed.

Claims 21-26, 41, 45-46 have been rejected.

Claims 21-26, 41 and 46 have been appealed.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 21-27, 41, 45-46 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *ClaimsAppealed*

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A substantially correct copy of appealed claim 46 appears on page 15 of the Appendix to the appellant's brief. The minor errors are as follows: claim 45 should have been claim 46 instead.

(9) *Prior Art of Record*

1185765	Brooks	6-1916
2606498	Summerlin et al	9-1976
3974615	Ditcher	8-1976
6200059	Sawdon et al	3-2001
4100997	Peacock	7-1978

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Brooks.

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having a having a cylindrical outer surface and having an open end and a close end (4), one of said ends having an exterior surface having a flange (10) lying in a plane inclined to longitudinal axis of said housing, an interior surface of said housing having a portion

thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 21-26, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks in view of Summerlin et al (AU2606498).

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having an open end and a close end (4), one of said ends having a flange (10) lying in a plane diagonally aligned with a longitudinal axis of said housing, another one of said ends having a flange (8) lying in a plane perpendicular to said longitudinal axis, an interior surface of said housing having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward, each projection having a tapering cross-section defined by a first surface diagonally aligned with the longitudinal axis and facing the open end (the tapering surface of the thread when looked upon from the open end), a plurality of ears (6) integrally joined at the open end of said housing and projecting away from the housing, each having a hooked-shaped configuration and cooperating with a flange adjacent said open end to embrace a marginal portion surrounding an opening, said end at said open end adapted to cover an opening to prevent seepage therethrough (inherently can be adapted to do so), a second plurality of flanges (8) extending radially outwardly from the

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housing and spaced along the housing, said closed end having a flange (8) integral with said housing and extending radially outward therefrom, a portion of said housing adjacent to said closed ends and a said closed end having a thickness which is chosen to provide additional structural strength (inherently so from the structure), at least an exterior portion(10) of the surface of the closed end being inclined relative to said longitudinal axis, the diagonally aligned flange lies in a plane (inherently so as the flange lies in at least one plane, the claim does not require that the flange has to be in one plane only).

Brooks does not show the second surface of the projections being perpendicular to said longitudinal axis and facing the closed end.

Summerlin (figure 2) shows an insert having internal projections (14) having tapering cross section defined by a first surface diagonally aligned with the longitudinal axis and facing an open end, a second surface perpendicular (from the look of the mating parts) to said longitudinal axis and facing another end.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brooks' projections to show the second surface being perpendicular to said longitudinal axis and facing the closed end because the examiner takes Official Notice of the equivalence of the projections with a surface perpendicular to a longitudinal axis and the projections with a second surface diagonally aligned with the longitudinal axis for their use in the insert and anchor art and the selection of any of these known equivalents to anchor a pin would be within the level ordinary skill in the art.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ditcher (4771861) in view of Peacock and Sawdon et al(6200059).

Ditcher (figure 2) shows in combination an insert and a reciprocatable pin assembly having a hollow substantially rectangular insert, the insert having a housing with an open end and a closed end, one of said ends having a flange lying in a plane perpendicularly aligned with a longitudinal axis of said housing, said pin being rectangular, the pin having a first portion of a different cross-section than a second portion of the pin, one edge of the pin detachably engaged the open end of the insert to form an annular shoulder at the juncture thereof (the mating juncture between the pin and insert forming shoulder), said shoulder being perpendicular to the longitudinal axis of the pin assembly.

Ditcher does not show the insert and the pin being substantially cylindrical in shape, the insert having at least one slot for insertion of a projection from one end of the second portion, the shoulder being formed by a first and second diameter of the pin at the juncture thereof.

Peacock discloses a pin having different cross sections forming annular shoulders for insertion into openings for forming step and to fasten the pin in the opening.

Sawdon et al (figure 11) discloses a pin(203) having a projection on one end for inserting into a slot (225) of an insert (221) to enable alignment of parts to easy manipulation.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ditcher to show the insert and the pin being substantially cylindrical in shape, the insert having slots for insertion of a projection of the pin, the shoulder being formed by a first and second diameter of the pin at the juncture thereof, a projection being arranged on said shoulder and extending into said slot on the insert because it is a matter of design choice to make the insert and the pin of a substantially cylindrical shape as the assembly functions the same to provide steps for manhole, and it would have been obvious to show the inserts having

slots for insertion of a projection from the pin because it would allow for the proper alignment, and fastening of a pin in the cylindrical insert.

(11) Response to Argument

With respect to applicant's argument that Brooks does not show "one of the open end and a closed end having a flange lying in a plane diagonally aligned with a longitudinal axis of the housing", examiner respectfully disagrees. Brooks figure 1 shows the frusto-conical flange being in a plane as cross section of the flange clearly shows the flange in a plane. Also, the claim language does not require that the flange has to lay entirely in a plane. The argument is thus moot.

With respect to applicant's argument about the usage of the Brook's insert, examiner respectfully points out that applicant only claims a subcombination to an insert and not to a combination with a mold assembly thereof. Brooks shows an insert also, and thus inherently able to function as claimed.

With respect to applicant's argument about the combination of Brooks and Summerlin, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The argument is thus moot.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Phi Dieu Tran A *PA*
April 5, 2003

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